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8

9  
10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 JOHN HUTCHENS, ZAMORA MOTON, ) Case No.: 07 CV 05600 BZ  
12 Plaintiffs, )  
13 vs. )  
14 ALAMEDA COUNTY MEDICAL CENTER, )  
and DOES 1-20, )  
15 Defendants. )  
16  
17

ALAMEDA COUNTY MEDICAL  
CENTER'S NOTICE OF MOTION AND  
MOTION TO DISMISS PURSUANT TO  
FED. R. CIV. P. 12(B)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
SAME

Date: February 6, 2008  
Time: 10:00 a.m.  
Dept: Courtroom G, 15<sup>th</sup> Floor

18  
19 TO PLAINTIFFS AND ALL OTHER PARTIES AND THEIR ATTORNEYS OF  
20 RECORD:

21 PLEASE TAKE NOTICE THAT on February 6, 2008 at 10:00 a.m., or as soon  
22 thereafter as the matter may be heard, in Courtroom G before the Honorable Bernard Zimmerman  
23 in the San Francisco Courthouse of the above-captioned court, located at 450 Golden Gate Ave.,  
24 San Francisco, California, defendant ALAMEDA COUNTY MEDICAL CENTER (hereafter  
25 "ACMC") will and hereby does move to dismiss all causes of action alleged against it in the  
26 Complaint for Damages and Injunctive Relief (hereafter "Complaint") filed by plaintiffs JOHN

27  
28 ALAMEDA COUNTY MEDICAL CENTER'S NOTICE OF MOTION AND MOTION TO DISMISS ALL  
CAUSES OF ACTION IN THE COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(6); MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT THEREOF  
Case no. 07-CV-05600 BZ

1 HUTCHENS and ZAMORA MOTON (hereafter "Plaintiffs") pursuant to Rule 12(b)(6) of the  
2 Federal Rules of Civil Procedure. ACMC so moves on the grounds that Plaintiffs' claims are  
3 barred by ACMC's qualified immunity; Plaintiffs' state law claims are time-barred for failure to  
4 present a claim to ACMC as required by the California Government Tort Claims Act; Plaintiffs'  
5 state law claims are barred by various state law immunities; and as to Plaintiff's Civil Code section  
6 52.1 claim, it fails to state a claim. Therefore, all claims against defendant ACMC should be  
7 dismissed.

8 This motion is supported by this notice of motion, the accompanying memorandum of  
9 points and authorities, a request for judicial notice and such other records and documents on file  
10 with the court and/or that may be lawfully presented at the time of hearing on this matter.

11 DATED: January 2, 2008

12 BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation

14 By: \_\_\_\_\_ /s/ Jill Sazama, Esq.

15 JILL P. SAZAMA, ESQ.

16 Attorneys for Defendant

17 ALAMEDA COUNTY MEDICAL  
CENTER

18 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

19 **OF MOTION TO DISMISS**

20 Because Plaintiffs' complaint in this case fails to state a claim, defendant ALAMEDA  
21 COUNTY MEDICAL CENTER (hereafter "ACMC") hereby moves to dismiss all causes of action  
22 therein pursuant to Federal Rule of 12(b)(6). Qualified immunity exists in favor of ACMC. As for  
23 Plaintiffs' state law claims, they are time-barred, and are barred by several state law immunities.  
24 Their Civil Code section 52.1 claim is also insufficiently pleaded. For the foregoing reasons,  
25 ACMC respectfully requests that its motion to dismiss be granted, and the Complaint against  
26 ACMC be dismissed.

1     **I. FACTUAL BACKGROUND**

2         Plaintiffs JOHN HUTCHENS and ZAMORA MOTON (hereafter "Plaintiffs") sue ACMC  
3 for injuries they claim to have suffered when a protective "hold" was placed on Plaintiffs' then-  
4 newborn child by an Alameda County social worker, Rudolpho Hernandez. Complaint, at 2:6-18.  
5 Their child was born in November 2005 at Highland Hospital, one of the hospitals operated by  
6 ACMC. *Id.*, at 1:24-26; Request for Judicial Notice (hereafter "RJN"), at 1:27. An initial hold  
7 was placed on Plaintiff's newborn after a test performed on plaintiff Moton, the infant's mother,  
8 came back positive for narcotics. Complaint at 2:1-6. That hold was lifted shortly thereafter,  
9 however, once it was revealed that the source for the positive test was a prescription of Tylenol  
10 with Codeine given by the hospital to Ms. Moton. *Id.* at 2:6-10.

11         However, Mr. Hernandez afterward re-instituted the hold, allegedly because he had  
12 reviewed "the past history of Plaintiff Moton and her contacts several years ago with Alameda  
13 County Social Services." *Id.* at 2:11-15, 2:21-23. It is this second hold that is the source of  
14 Plaintiff's complaint.

15         Once the hold was re-instituted, Plaintiffs' access to their child was restricted by ACMC  
16 personnel. Plaintiffs were not all denied access to their newborn, however. Instead they complain  
17 that "defendants at the hospital . . . would not allow Plaintiff Moton to have the baby alone in her  
18 room." Complaint, at 2:14-16. Plaintiff Moton was furthermore "required to move out of her  
19 room and was given a small cot in the waiting room next to the nursery, and was not allowed  
20 visitors." *Id.* at 2:18-19.

21         "The following Monday," Mr. Hernandez informed the Plaintiffs that there would be a  
22 custody hearing to determine the fate of the baby. *Id.* at 2:23-25. The hearing was held that  
23 afternoon at the Alameda County Department of Social Services. *Id.* at 2:25-26. Neither ACMC  
24 nor any of its employees or agents are alleged to have participated in this hearing.

25         At the hearing, Plaintiffs allege that Mr. Hernandez did not advance any good grounds "to  
26 assert that Plaintiff Hutchens was in any way unqualified to have custody of the baby." *Id.* at 3:8-  
27

1       10. Ultimately "Hernandez and Alameda County Social Services" released the hold on the baby,  
 2 and Plaintiffs were allowed to take the baby home from the hospital. *Id.* at 3:12-14.

3           In terms of ACMC's wrongful conduct, it is very limited. The allegations are clear that it  
 4 was Mr. Hernandez, not ACMC, who made the decision to re-institute the hold. *Id.* at 2:11-15.  
 5 Plaintiffs admit that Mr. Hernandez is not employed by ACMC, but rather by the County of  
 6 Alameda, a separate public entity. Complaint at 2:6-7; RJD, at 1:22 - 2:13. ACMC is not legally  
 7 responsible for Mr. Hernandez' actions. Plaintiffs nevertheless claim that, based on the above  
 8 facts, ACMC allegedly "conspired with, acted in concert and unlawfully cooperated with  
 9 Hernandez and Alameda County Social Services in the unlawful seizure and detention of the baby  
 10 without due process of law . . ." Complaint at 3:20-23. ACMC also allegedly "refused the  
 11 parents' request to take appropriate steps to release their baby, even though they were holding the  
 12 baby without a warrant or other legal process." *Id.* at 3:24-26.

13           Plaintiffs served a California government tort claim on the County of Alameda on May 2,  
 14 2006. Complaint at 4:1-4. They admit that they have never served such a claim on ACMC.  
 15 Instead, they assert as a legal conclusion that the claim which they presented to the County of  
 16 Alameda "constituted service on the defendant Alameda County Medical Center." *Id.* at 4:4-6. As  
 17 set forth below, that assertion is legally groundless.

18           On November 3, 2006, Plaintiffs initially filed suit in this court against the Alameda  
 19 County Department of Social Services, Alameda County Department of Children and Family  
 20 Services, and against Mr. Hernandez individually. Original Complaint in *Hutchens, et al. v.*  
 21 *County of Alameda, et al.*, United States District Court, Northern District of California, case no.  
 22 06-CV-6840 SBA, hereafter "*Hutchens I*". This case pre-dates the instant suit.

23           Although Plaintiffs never served process on ACMC, Plaintiffs asked in *Hutchens I* that the  
 24 court deem service of process on the County of Alameda as effective service on ACMC. RJD at  
 25 2:19 – 3:2.) Judge Armstrong in *Hutchens I* correctly denied these attempts. RJD at 3:1-2.) She  
 26 ordered Plaintiffs to serve all defendants in *Hutchens I* by October 3, 2007. RJD at 3:3-4.

1 Plaintiffs missed this October 3<sup>rd</sup> deadline. See RJD at 3:5-8. Instead, on November 2, 2007,  
 2 Plaintiffs filed the instant Complaint in this case.

3 Plaintiffs delineate no individual causes of action in the instant Complaint. They allege  
 4 that they are bringing an action pursuant to 42 U.S.C. section 1983. Complaint, at 1:18-20. They  
 5 also appear to claim that ACMC is liable for false imprisonment, intentional "or" negligent  
 6 infliction of emotional distress, violation of their California constitutional due process rights and  
 7 rights against unlawful searches and seizures, and violation of their rights as protected by  
 8 California Civil Code section 52.1. Complaint, at 4:7-13.

9 As set forth below, this Complaint is not well-pleaded. Therefore, ACMC respectfully  
 10 requests that its motion to dismiss be granted.

11 **II. ARGUMENT**

12 **A. ACMC Has Qualified Immunity**

13 A public entity is only liable under 42 U.S.C. section 1983 where it has a policy, custom or  
 14 practice that violates the constitutional rights of an individual. *Monell v. Dep't of Soc. Servs.*, 436  
 15 U.S. 658, 691 (1978). It bears no respondeat superior liability for the acts or omissions of  
 16 employees. (*Ibid.*) Instead a public entity such as ACMC must have had to have a policy, custom  
 17 or practice of engaging in conduct that violates the Plaintiffs' constitutional rights.

18 In California, if a mother tests positive for a controlled substance, the law requires that a  
 19 needs assessment be performed before the infant may be released from the hospital. Cal. Penal  
 20 Code § 11165.13; Cal. Health & Saf. Code § 123605. The assessment may be made by a health  
 21 practitioner or a medical social worker. Cal. Health & Saf. Code § 123605, subd. (b). State law  
 22 requires that this assessment include identifying any needed services for the mother, child or  
 23 family, and determining the "level of risk to the newborn upon release to the home and the  
 24 corresponding level of services and intervention, if any, necessary to protect the newborn's health  
 25 and safety, including referral to the county welfare department for child welfare services." *Id.* at  
 26 §123605, subd. (c)(2). A social worker, in turn, may under California law

27 [t]ake into and maintain temporary custody of, **without a warrant**, a minor . . . who

-5-

1           the social worker has reasonable cause to believe is a person described in  
 2 subdivision (b)<sup>[1]</sup> or (g)<sup>[2]</sup> of [Welf. & Instit. Code] Section 300, and the social  
 3 worker has reasonable cause to believe that the minor has an immediate need for  
 4 medical care or is immediate danger of physical or sexual abuse or the physical  
 5 environment poses an immediate threat to the child's health or safety.

6           Cal. Welf. & Instit. Code § 306(a)(2) (emphasis added). Subdivisions (b) and (g) of section 300  
 7 describe situations in which a child is in substantial risk of being abused, or has been left without  
 8 any support.

9           After a hold is instituted, the social worker is to immediately inform the minor's parent or  
 10 guardian that the child has been taken into protective custody. Cal. Welf. & Instit. Code § 307.4,  
 11 subd. (a). The social worker is also, among other things, required to place the child in a "facility  
 12 authorized by law to care for the child." Cal. Welf. & Instit. Code § 308, subd. (a). If a child is  
 13 taken into custody while in the care of a "physician or surgeon or a hospital, . . . and cannot be  
 14 immediately moved," "the child shall **be deemed to have been taken into temporary custody**  
 15 and delivered to the social worker . . . **while the child is at the . . . medical facility.**" Cal. Welf.  
 16 & Instit. Code § 309, subd. (b) (emphasis added).

17           The actions taken in this case are consistent with the foregoing. After Ms. Moton's  
 18 positive narcotics test, a temporary hold was instituted and a social worker was called, consistent  
 19 with Health and Safety Code section 123605. The hold was lifted once the source of the positive

20           <sup>1</sup> Section 300(b) of the Welfare and Institutions Code provides in relevant part:

21           The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm  
 22 or illness, as a result of the failure or inability of his or her parent or guardian to adequately  
 23 supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to  
 24 adequately supervise or protect the child from the conduct of the custodian with whom the child has  
 25 been left, or by the willful or negligent failure of the parent or guardian to provide the child with  
 26 adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to  
 27 provide regular care for the child due to the parent's or guardian's mental illness, developmental  
 28 disability, or substance abuse. . . .

20           <sup>2</sup> Section 300 (g) of the Welfare and Institutions Code provides:

21           The child has been left without any provision for support; physical custody of the child has been  
 22 voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has  
 23 not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's  
 24 parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a  
 25 relative or other adult custodian with whom the child resides or has been left is unwilling or unable  
 26 to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable  
 27 efforts to locate the parent have been unsuccessful.

1 test was discovered to be the drug prescription. However Mr. Hernandez re-instituted a second  
2 hold, based on other information that he had discovered. That decision was his, not ACMC's.  
3 ACMC was not alleged to be privy to his decision-making process, and there is no allegation that  
4 ACMC had any reason or basis to question his decision.

5 Because the infant was a newborn, and was already at Highland Hospital (part of ACMC),  
6 he simply remained at Highland while the dependency investigation progressed. Welf. & Instit.  
7 Code § 309. This too is consistent with California law.

8 Nevertheless, Plaintiffs now blame ACMC for enforcing the hold that Mr. Hernandez  
9 imposed. As the foregoing facts show, ACMC is entitled to qualified immunity.

10 In order to decide whether an entity is entitled to qualified immunity, the court must  
11 determine (1) what constitutionally protected right was violated, (2) whether the right was so  
12 clearly established at the time of the incident that a reasonable official would have been aware that  
13 the conduct violated constitutional bounds, and (3) whether a reasonable public official could have  
14 believed the alleged conduct was lawful. *Hydrick v. Hunter*, 500 F.3d 978, 988-89 (9<sup>th</sup> Cir. 2007).

15 Turning to the first element, ACMC did not violate Plaintiffs' constitutional rights by  
16 observing the hold placed on Plaintiffs' newborn by Mr. Hernandez. Plaintiffs complain that the  
17 hold was "without a warrant and without an adequate investigation," and that it violated their  
18 constitutional right to familial association. However, California law permits a temporary hold  
19 **without a warrant** where the circumstances meet the relevant statutory requirements, i.e. there  
20 exists an immediate need for such a hold. Whether the hold was with, or without, adequate  
21 investigation was not within ACMC's knowledge.

22 Plaintiffs assert that it was later determined that there was in fact no basis for such a hold.  
23 However there are no facts to suggest that ACMC had any reason to believe at the time that the  
24 hold was groundless. Plaintiffs' allegations make clear that ACMC did not participate in the  
25 decision to re-institute the hold. Both the original and second hold were instituted by Mr.  
26 Hernandez. He is a duly authorized employee of the County of Alameda, a separate entity from  
27

1 ACMC. Complaint, at 2:6-8; R.J.N., at 1:22 – 2:13. ACMC is not responsible for, or a part of, his  
2 decision-making process.

3 Even with the hold in place, Plaintiffs' access to their child was not completely cut off.  
4 Plaintiffs admit that they were not denied all access to their child. Rather, they were permitted  
5 supervised, restricted access. While they object strenuously to being supervised or restricted in  
6 any way, these measures were reasonable under the circumstances of what ACMC understood to  
7 be a temporary protective hold necessary to protect an at-risk child. ACMC submits that its  
8 alleged actions do not rise to the level of a constitutional violation.

9 As to the second element, Plaintiffs' allegations fail to show that a reasonable official  
10 would have known that ACMC's actions were unconstitutional. As far as ACMC knew, a duly  
11 authorized social worker had deemed Plaintiffs' newborn to be in immediate danger (the standard  
12 required for a hold under California law), and so had instituted a hold. ACMC had no information  
13 to doubt this assessment.

14 Finally, as to the third element, a reasonable public official in ACMC's place would have  
15 believed that ACMC was acting lawfully. Again, a duly authorized social worker had instituted a  
16 temporary hold on a newborn. ACMC's hospital took custody of the newborn while this hold was  
17 investigated. ACMC's actions were to restrict and supervise the parents' access with their  
18 newborn. All access was not taken away. Plaintiffs were simply not allowed to take their baby  
19 home, nor were they allowed unsupervised access to their child. Given that the hold was in place,  
20 these actions were not excessive or unreasonable.

21 To the extent Plaintiffs condemn ACMC for the hold itself, again, that was Mr.  
22 Hernandez's decision, not ACMC's. Mr. Hernandez is not an employee of ACMC. No facts are  
23 alleged to suggest that ACMC had any reason to doubt the lawfulness of Mr. Hernandez' decision.  
24 ACMC respectfully submits that, given that Mr. Hernandez' conduct appeared authorized by law  
25 and not unconstitutional, a reasonable public official could have believed it to be lawful. ACMC  
26 simply did its best to strike a fair balance between the interests of the state in protecting an  
27

1 (ostensibly) endangered child, and the interests of the parents in having unrestricted access to their  
2 child. ACMC should not be penalized for merely following the apparently lawful directives of a  
3 duly authorized third party, especially when those directives suggest that a newborn may be in  
4 danger. This is precisely the situation qualified immunity was intended to protect.

5 Plaintiffs' allegations do not overcome ACMC's qualified immunity. Even if Plaintiffs can  
6 show their constitutional rights were violated, ACMC had no reason to believe that it was acting in  
7 any way other than lawfully. Therefore, ACMC requests that its motion to dismiss based on  
8 qualified immunity be granted.

9 **B. Plaintiffs' State Law Claims Are Time-Barred**

10 Turning exclusively to Plaintiffs' state law claims (Complaint, at 4:6-13), these claims are,  
11 at the outset, time-barred, under California Government Tort Claims Act. "Generally speaking, no  
12 suit for money or damages may be brought against a public entity on a cause of action for which a  
13 claim is required to be presented until a written claim has been presented to the public entity and  
14 has been acted upon by the board, or has been deemed to have been rejected by the board." *Munoz*  
15 *v. State of California*, 33 Cal.App.4th 1767, 1776 (1995); Cal. Gov. Code §§ 905, 905.2, 911.2,  
16 945.4. Current law, and the law in place at the time of the events in question, requires the injured  
17 party to present a claim within six months of his or her cause of action. Cal. Gov. Code §§ 911.2,  
18 945.4. If the injured party fails to file a timely claim, a written application may be made to the  
19 public entity for leave to present a late claim, provided, however, that the application is made  
20 within a reasonable time, "**not to exceed one year of the accrual of the cause of action.**" Cal.  
21 Gov. Code § 911.4.

22 Here, Plaintiffs admit that they have never presented a claim to ACMC. Complaint, at 4:3-  
23 6. The allegedly wrongful acts all took place in November 2005. There is no basis for tolling  
24 alleged. At the latest, the six-month claims presentation deadline ran out by June 2006. The tort  
25 claims act gave Plaintiffs a year after the accrual of the claim (or until November 2006) to file suit  
26 and seek leave to proceed without filing a claim. Cal. Gov. Code § 911.4. Plaintiffs failed to seek  
27

1 leave. California case authority establishes that presenting a claim (and otherwise following the  
 2 requirements of the Tort Claims Act) is a jurisdictional requirement. *Dixon v. City of Turlock*, 219  
 3 Cal. App. 3d 907, 913 (Cal. Ct. App. 1990). Once the year deadline has passed, neither the public  
 4 entity nor the courts have any discretion to waive or otherwise relieve a party from his or her  
 5 failure to file a timely claim or file an application to seek to file suit without a claim. *Ibid.* Since  
 6 Plaintiffs have never filed a claim with ACMC, their state law claims are now irretrievably barred.

7 Plaintiffs' only defense to the foregoing is their argument that "service of the tort claim on  
 8 the County of Alameda constituted service on the defendant Alameda County Medical Center."  
 9 This is of course a legal conclusion, which court is not required to accept as true. This is fortunate,  
 10 because this argument is without merit.

11 As set forth in detail in the accompanying request for judicial notice, ACMC and the  
 12 County are separate public entities. California Health & Safety Code section 101850 permitted the  
 13 County of Alameda to create an independent public hospital authority "for the purpose of effecting  
 14 a transfer of the management, administration, and control of the [Alameda County] medical center  
 15 in accordance with Section 14000.2 of the Welfare and Institutions Code." Cal. Health & Safety  
 16 Code § 101850, subd. (b). Section 101850 specifically provides that if the County creates such a  
 17 public hospital authority, it shall be a separate public entity from the County:

18       **A hospital authority created pursuant to this chapter shall be a legal**  
 19 **entity separate and apart from the county and shall file the statement required by**  
 20 **Section 53051 of the Government Code. The hospital authority shall be a**  
 21 **government entity separate and apart from the county, and shall not be**  
 22 **considered to be an agency, division, or department of the county.** The hospital  
 23 authority shall not be governed by, nor be subject to, the charter of the county and  
 24 shall not be subject to policies or operational rules of the county, including, but not  
 25 limited to, those relating to personnel and procurement.

26 Cal. Health & Safety Code § 101850, subd. (j) (emphasis added).

27 Pursuant to this statute, in 1998, the County enacted Ordinance 0-98-56. A copy of this  
 28 ordinance is attached as part of Exhibit 1 to the Request for Judicial Notice herein. This ordinance  
 created the Alameda County Medical Center hospital authority as a separate public entity from the

1 County. ACMC is governed by a Board of Trustees separate and apart from the County Board of  
 2 Supervisors. The Alameda County Medical Center appears on the California Secretary of State's  
 3 Roster of Public Agencies as a separate public agency. RJN, Exhibit 1 (Roster of Public  
 4 Agencies).

5 Given that the Count and ACMC are separate public entities, California case authority  
 6 holds that Plaintiffs' presentment of a claim to the County does not operate as service of such a  
 7 claim to ACMC. *See, e.g. Santee v. Santa Clara County Office of Educ.*, 220 Cal. App. 3d 702,  
 8 713-714 (Cal. Ct. App. 1990). Again, ACMC and the County are totally separate public entities.  
 9 They are each run by a separate boards. As the court in *Santee v. Santa Clara County Office of*  
 10 *Educ.* held, under these circumstances, presentment of a claim on the County does not effectuate  
 11 presentment of a claim on ACMC. *Ibid.*

12 Because Plaintiffs never presented a claim to ACMC, Plaintiffs' state law claims are still  
 13 time-barred. Therefore, Plaintiffs' state law claims should be dismissed without leave to amend.

14 **C. Plaintiffs' State Law Claims are Barred by State Law Immunities**

15 Even if Plaintiffs' state law claims were not time-barred, various state law immunities bar  
 16 Plaintiffs' state claims against ACMC. Under the California Tort Claims Act, "[e]xcept as  
 17 otherwise provided by statute: ¶ (a) A public entity is not liable for an injury, whether such injury  
 18 arises out of an act or omission of the public entity or a public employee or any other person." Cal. Gov. Code § 815, subd. (a). "The liability of a public entity established by this part  
 19 (commencing with Section 814) is subject to any immunity of the public entity provided by statute,  
 20 including this part, and is subject to any defenses that would be available to the public entity if it  
 21 were a private person." Cal. Gov. Code § 815, subd. (b); *Jacqueline T. v. Alameda County Child*  
 22 *Protective Services*, 155 Cal. App. 4th 456, 464 (Cal. Ct. App. 2007)

23 Government Code section 820.4 immunizes public employees for their acts or omissions,  
 24 while exercising due care, in the execution or enforcement of any law. Here, Plaintiffs appear to  
 25 hold ACMC liable for enforcing the temporary hold that Mr. Hernandez imposed on Plaintiffs'

1 newborn infant. ACMC had no reason to know or believe that there was anything unlawful about  
 2 that hold. Therefore, pursuant section 820.4, ACMC is immune for its actions in enforcing the  
 3 hold.

4 Government Code section 820.2 also immunizes ACMC to the extent that ACMC's acts  
 5 and omissions regarding the hold were discretionary. Section 820.2 immunizes a public employee  
 6 for acts or omissions that were the result of the exercise of discretion vested in him, regardless of  
 7 whether that discretion was abused. Here, Plaintiffs complain that ACMC observed and followed  
 8 the hold that Mr. Hernandez had imposed. To the extent that Plaintiffs' claim that ACMC had  
 9 discretion to ignore, or supersede, the requirements of the hold imposed by Mr. Hernandez, ACMC  
 10 asserts that it is immune from liability for this discretionary decision, pursuant to Government  
 11 Code section 820.2.

12 Government Code section 821.6 also immunizes ACMC. Section 821.6 immunizes a  
 13 public entity for any injury caused by a public employee instituting or prosecuting any judicial or  
 14 administrative proceeding within the scope of his or her employment. Cal. Gov. Code § 821.6.  
 15 While ACMC was not the instigator of the hold, ACMC's actions were necessary in order to  
 16 protect the newborn while the child abuse investigation was proceeding. Since ACMC's actions in  
 17 enforcing the hold were incidental to the investigation, ACMC and its personnel are immune under  
 18 section 821.6. *Jacqueline T. v. Alameda County Child Protective Services*, 155 Cal. App. 4th 456,  
 19 468 (Cal. Ct. App. 2007) (holding an employee's incidental actions taken in the course of  
 20 investigating a child abuse case are immune).

21 Finally, Plaintiffs are seeking punitive or exemplary damages against ACMC. Complaint,  
 22 at 4:22-24. To the extent Plaintiffs seek punitive damages against ACMC based on their state law  
 23 claims, Government Code section 818 bars such claims against public entities. For this additional  
 24 reason, ACMC's motion should be granted with respect to Plaintiffs' punitive damages claims.

25 **D. Plaintiffs' Civil Code Section 52.1 Claim is Not Well-Pleaded**

26 Lastly, Plaintiffs' claim under California Civil Code section 52.1 fails on its face. Section  
 27

1 52.1 reads in pertinent part:

2                 (a) If a person or persons, whether or not acting under color of law,  
 3                 interferes *by threats, intimidation, or coercion, or attempts to*  
 4                 *interfere by threats, intimidation, or coercion*, with the exercise or  
 enjoyment by any individual or individuals of rights secured by the  
 Constitution or laws of the United States, or of the rights secured by  
 the Constitution or laws of this state . . . .

5                 (b) Any individual whose exercise or enjoyment of rights secured by  
 6                 the Constitution or laws of the United States, or of rights secured by  
 7                 the Constitution or laws of this state, has been interfered with, or  
 8                 attempted to be interfered with, *as described in subdivision (a)*, may  
 9                 institute and prosecute in his or her own name and on his or her own  
 behalf a civil action for damages, including, but not limited to,  
 damages under Section 52, injunctive relief, and other appropriate  
 equitable relief to protect the peaceable exercise or enjoyment of the  
 right or rights secured. (emphasis added)

10

11                 Plaintiffs nowhere allege that ACMC engaged in any threats, intimidation, or coercion. In  
 12 order to sustain a violation of Civil Code section 52.1, a plaintiff must show an attempted or  
 13 completed act of interference with a legal right, *accompanied by a form of coercion*. *City and*  
*14 County of San Francisco v. Ballard* , 136 Cal.App.4th 381, 408 (2006). “The language of section  
 15 52.1 provides remedies for ‘certain misconduct that interferes with’ federal or state laws, *if*  
 16 *accompanied by threats, intimidation, or coercion, and whether or not state action is involved.*”  
*17 Venegas v. County of Los Angeles*, 32 Cal.4th 820, 843 (2004), citing *Jones v. Kmart Corp.*, 17  
 18 Cal.4th 329, 338 (1998) (emphasis added). Because Plaintiffs have not pled, and under no  
 19 circumstances did there exist, any conduct by ACMС rising to the level of a threat of violence,  
 20 intimidation, or coercion, Plaintiffs fail to satisfy the requirements for a claim under California  
 21 Civil Code section 52.1. For this additional reason, ACMС’s motion to dismiss should be granted.

22 **III. CONCLUSION**

23                 Plaintiffs’ claims against ACMС are meritless. ACMС is entitled to qualified immunity for  
 24 its role in enforcing the second temporary hold. ACMС should not be penalized for attempting to  
 25 protect Plaintiffs’ newborn, especially since it acted reasonably by allowing Plaintiffs access to  
 26 their son. ACMС had no reason to doubt the lawfulness of Mr. Hernandez’ hold, and had good

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1 reason to believe its own actions were lawful. It is entitled to qualified immunity.

2 As for Plaintiffs' state law claims, they are time-barred by the California Tort Claims Act.  
3 Plaintiffs knew from their first lawsuit that ACMC was a separate entity from the County of  
4 Alameda. They were told in no uncertain terms that ACMC had to be served separately. They  
5 never bothered to serve a claim on ACMC. Their claims are now time-barred.

6 Even if the state law claims were not time-barred, ACMC is immunized from liability by  
7 various state law immunities. Moreover, Plaintiffs' Civil Code section 52.1 claim is not well-  
8 pleaded.

9 For all of the foregoing reasons, defendant ACMC respectfully requests that the court grant  
10 this motion in its entirety without leave to amend.

11 DATED: January 2, 2008

12 BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation

14 By: /s/ Jill Sazama, Esq.

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